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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-699

ABBOTT LABORATORIES, A CORPORATION

HERBERT M. GROSS, CLARENCE J. ENDICOTT, ROBERT T. O'DONNELL, ROBERT H. OTTO, AND HARRY W. HOWELL, INDIVIDUALS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A), as revised to reflect changes in pages 15, 19 and 20 of the slip opinion originally issued (Pet. App. B), is reported at 505 F. 2d 565. The opinion of the district court (Pet. App. C) is reported at 369 F. Supp. 1396.

JURISDICTION

The judgment of the court of appeals was entered on October 2, 1974. A timely petition for rehearing *en banc* (Pet. App. B) was denied on November 5, 1974. The petition for a writ of certiorari was filed on December 4, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court should have conducted a *voir dire,* or granted a continuance or a change of venue, before dismissing an indictment charging violations of the Federal Food, Drug, and Cosmetic Act of 1938, because of allegedly prejudicial pretrial publicity.

2. Whether references by government attorneys before a grand jury investigating the distribution of allegedly adulterated and misbranded intravenous solutions, to reports of deaths and illnesses associated with their use, warranted dismissal of the indictment.

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS AND CANONS INVOLVED

The Sixth Amendment to the Constitution is set forth at Pet. 3. Rule 1J of the Rules of the United States District Court for the Eastern District of North Carolina, Disciplinary Rule 7–107(B) of the American Bar Association Code of Professional Responsibility and 28 C.F.R. 50.2(b) are set forth at Pet. 3–5.

Section 301 of the Federal Food, Drug, and Cosmetic Act of 1938, 52 Stat. 1042, as amended, 21 U.S.C. 331, provides:

> The following acts and the causing thereof are prohibited:
>
> (a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

Section 502 of the Federal Food, Drug, and Cosmetic Act of 1938, 52 Stat. 1050, as amended, 21 U.S.C. 352 provides:

> A drug * * * shall be deemed to be misbranded—
>
> * * * * *
>
> (j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

STATEMENT[1]

In December 1970, the Center for Disease Control (CDC), an agency of the United States Public Health Service, commenced an investigation into reports of an increase in the incidence of septicemia (blood poisoning) among hospital patients.[2] The preliminary results of this investigation were described in the

[1] The facts, as supplemented by the record references herein, are taken largely from the opinions of the district court and the court of appeals.

[2] The primary mission of the Center for Disease Control is to monitor, investigate and research the cause, spread and control of infectious diseases. It is also charged with the responsibility of disseminating to the health care community information obtained through its investigation and research. To this end, CDC issues a weekly report, "Morbidity and Mortality Weekly Report," in which it summarizes its data, issues warnings on possible health hazards and suggests methods of treatment.

March 12, 1971, issue of the Center's nationally distributed "Morbidity and Mortality Weekly Report." The Report stated that 150 cases of blood poisoning and nine deaths had occurred between October 1970 and March 1, 1971 in eight separate hospitals, each of which made exclusive use of intravenous fluids and systems manufactured by Abbott Laboratories. The Report also stated that bacterial contamination had been found in the cap liner of unopened Abbott I.V. bottles which could enter the fluid when the caps were opened and replaced in the course of normal hospital usage. The Report warned "that special precautions must be taken in hospitals, nursing homes, and other health care facilities to reduce the risk of septicemia from the use of Abbott Laboratories intravenous (IV) infusion products" (J.A. 150a–151a).[1] The CDC Report received national news media coverage, including a March 29, 1971 "Newsweek" magazine article entitled "A Case of Bottled Death," which described the illnesses and deaths reported by the CDC and set forth in detail the isolation of "the guilty" germ in the cap liner of the Abbott I.V. bottle (J.A. 148–149).

Following publication of the CDC Report and the resulting publicity, the Food and Drug Administration (FDA) commenced an investigation to determine whether the Federal Food, Drug and Cosmetic Act had been violated. A federal grand jury in Raleigh, North Carolina, heard the evidence gathered by FDA and the Department of Justice, including the testimony of several Abbott employees. On three occasions during the course of the grand jury investigation, the

[1] "J.A." refers to the Joint Appendix filed in the court of appeals.

possibility that some persons had died as a result of using adulterated Abbott products was mentioned. The first reference to reports of possible deaths was apparently made by one or more preliminary witnesses during their testimony (Pet. App. A, p. A–6). The second occurred during the examination of petitioner Robert O'Donnell, Abbott's Director of Quality Assurance, who was asked about the reaction of various Abbott employees to the reports showing greater numbers of blood poisoning cases in hospitals. During this questioning he was also asked if he had heard about any deaths resulting from the use of Abbott products (Pet. App. A, p. A–6).[4] The third reference to reports of deaths was during the prosecutor's discussion of the proposed indictment on the day the grand jury returned the indictment. (*ibid.*)

On May 29, 1973, the grand jury returned a sixty count indictment charging Abbott Laboratories and five of its current or former employees, including Robert O'Donnell, with causing the introduction into interstate commerce of adulterated and misbranded intravenous solution drugs, in violation of Section 301(a) of the Federal Food, Drug and Cosmetic Act of 1938, 21 U.S.C. 331(a) (J.A. ~~62–92~~). The drugs were alleged to be adulterated because they did not meet official United States Pharmacopeia standards of purity to which they purported to comply (21 U.S.C. 351(b)), and because the methods used in their

[4] The transcript reveals that the questions by the prosecutor on this point were propounded in the context of probing an obviously recalcitrant witness. See Pet. 8–9; Pet. App. C, pp. C–3 to C–4.

manufacture did not conform with current good manufacturing practice to insure that the product would meet the standards of quality and purity claimed by the product (21 U.S.C. 351(a)(2)(B)) (J.A. 8a–17a). They were alleged to be misbranded because their labelling claimed they were sterile when they were not (21 U.S.C. 352(a)), and because the drug was dangerous to health when used as prescribed in the labelling (21 U.S.C. 352(j)) since contaminating micro-organisms would be transmitted from the bottle to the patient (J.A. 18a–27a).

Shortly after the indictment was issued in Raleigh, the Department of Justice in Washington, D.C., and the United States Attorney's office in Raleigh issued separate but similar press releases (J.A. 124a–127a). These releases did not say that deaths were associated with Abbott I.V. solutions, but shortly thereafter a Raleigh news reporter interviewed the United States Attorney and two Department of Justice attorneys and asked whether any people had become sick or died from administration of the Abbott I.V. solutions. One of the Department of Justice attorneys responded by noting the fact that the "Mortality and Morbidity Weekly" had reported in March, 1971, that there had been nine deaths associated with the use of Abbott I.V. fluids (Pet. App. A, p. A–4). While this interview was still in progress, United Press International (UPI), a news wire service, reported that the grand jury had returned criminal indictments involving allegedly contaminated intravenous fluids linked to nine deaths and hundreds of injuries (J.A.

157a–159a). UPI attributed this story to a Justice Department announcement (Pet. App. A, p. A–4).[5]

After the indictment was returned, FDA issued a statement in the form of a Note to Correspondents (J.A. 128a–129a). The Note contained information substantially identical to that originally released in the CDC Report of March 12, 1971. However, prior to the issuance of the Note, an FDA official asked CDC to verify the information in the Note. He was informed that CDC had revised its figures relating to the number of deaths and illnesses associated with the use of the Abbott I.V. solution. On the basis of this revised information and without notifying the government attorneys involved in the case, the FDA official revised the Note to reflect the new data (Pet. App. C, p. C–8). Therefore, the FDA note refers to 50 deaths being associated with the use of the Abbott I.V. solution, rather than nine. The Note also stated that the individuals named in the indictment "held positions of responsibility with respect to the adulteration and misbranding of the intravenous drugs named in the indictment" (Pet. App. A, p. A–5).

1. Proceedings in the District Court

Petitioners filed two separate motions to dismiss the indictment. The first alleged that the various statements of government officials after the return of

[5] Attributing this story to a Department of Justice announcement was incorrect. Affidavits in the record submitted by Department of Justice personnel show that the Department made no announcement which made any reference to deaths being associated with the Abbott solutions (J.A. 762a).

the indictment were highly inflammatory, prejudicial, and denied them their constitutional right to a fair trial. Attached to this motion were a number of exhibits showing that the "9 death" and the "50 death" stories had been reported in a number of different newspapers and mentioned in several radio and TV broadcasts (J.A. 49a–122a).[6]

The second motion sought to dismiss the indictment on the ground that the conduct of the Department of Justice attorneys in presenting the case to the grand jury was "prejudicial and inflammatory" because, in the defendants' view, deaths were not relevant to the offenses described in the indictment, but the possibility that persons had died as a result of using the Abbott I.V. solution had been mentioned to the grand jury (Pet. App. A, p. A–7).

The district court granted both motions to dismiss. Without attempting to impanel a jury, the court concluded that the news reports issued at the time the indictment was returned had prejudiced the community from which the jury would be selected to such a degree that a *voir dire* would not adequately protect the defendants' constitutional right to a fair trial (Pet. App. C. pp. C–14 to C–15). The court further determined that a continuance would not protect the defendants' right to a fair trial because of the recurrent nature of the prejudicial publicity and because it would deny the defendants' right to a speedy trial (Pet. App. C, pp. C–15 to C–16). The court also stated

[6] Petitioners also disputed the accuracy of the CDC data.

that a change of venue would be a "useless gesture" because of the nationwide publicity given to the indictment (Pet. App. C, p. C–16). Finally, the district court granted the second motion to dismiss on the ground that the prosecutor exceeded his authority by introducing "by his questions or remarks [before the grand jury], extraneous and irrelevant evidence" relating to deaths from Abbott I.V. solutions (Pet. App. C, p. C–18).

2. Proceedings in the Court of Appeals

The court of appeals reversed. While the court disapproved certain conduct by the government with regard to prejudicial pretrial publicity (Pet. App. A, p. A–9), it held that the district court should not have dismissed the indictment without first attempting by means of a *voir dire* examination to select an impartial jury. The court stated that in cases involving prejudicial pretrial publicity the important question is "whether fairness to defendants may still be accomplished and not whether misconduct of the government warrants punishment which also forfeits the rights of society" (Pet. App. A, p. A–9). Referring to this Court's opinion in *Rideau* v. *Louisiana*, 373 U.S. 723,[7] the court noted (Pet. App. A, pp. A–10 to A–11):

> Whatever may be the ultimate implications of *Rideau*, we do not think that in this case the district court's finding that voir dire could

[7] Petitioners continue to rely primarily on *Rideau* in this Court, as they did in the courts below. See Pet. 10–16.

> not be used to guarantee defendants' right to a fair trial can be sustained. * * * In sum, we hold that, although in a proper case *Rideau* may not require resort to voir dire and proof of the results thereof as proof essential to a finding that a defendant may not receive a fair trial so as to warrant dismissal of an indictment, such proof is essential in the instant case. Consequently, the district court's finding that a fair trial was impossible and its legal conclusion that the indictment should be dismissed cannot stand, since voir dire was not employed.

Because of its conclusion in regard to the failure of the district court to make use of *voir dire*, the court of appeals discussed only briefly the efficacy of a continuance and a change of venue to protect the defendants' right to a fair trial in these circumstances. While the court recognized that a change of venue cannot be ordered without the defendants' consent, and that a continuance may present speedy trial problems if the defendants object, the court believed that the availability of these two additional remedies places a heavy burden on the defendants to show the ineffectiveness of these remedies as alternatives to dismissal of the action (Pet App. A, pp. A–11 to A–12).

Finally, the court concluded that the indictment should not have been dismissed because reports of deaths were mentioned during the grand jury proceedings. The court noted that evidence of deaths was relevant to the grand jury investigation because that evidence "would establish that the solutions were 'dangerous to health' " within the meaning of Section 502

(j) of the Act, 21 U.S.C. 352(j) (Pet. App. B, p. B–3). The court further indicated that evidence that deaths were associated with the use of Abbott products may be relevant at trial (Pet. App. B, pp. B–3 to B–4). The court concluded that there was no evidence in the record to support the district court's finding that the primary purpose of references to deaths before the grand jury was to arouse the prejudice of the grand jurors against the defendants; it held this finding by the district court to be "clearly erroneous" (Pet. App. A, p. A–14).

ARGUMENT

The judgment of the court of appeals, reversing the order of dismissal by the district court, is correct and is consistent with decisions of this Court. It therefore presents no issue warranting further review.

1. Petitioners argue that the pretrial publicity in this case created "an inherently suspect trial situation" (Pet. 2)[8] and that they would have been denied a fair trial if the district court had not dismissed the indictment. But there is no evidence in the record to support this conclusion because the district court did not conduct a *voir dire* examination of potential jurors in order to determine the effect of the publicity. Indeed, the district court failed to resort to any of the established techniques commonly used to protect

[8] This phrase, borrowed by petitioners from this Court's opinion in *Estes* v. *Texas*, 381 U.S. 532, was never used by the district court, presumably because the court, having refused to conduct a *voir dire* to determine what the prospective jurors had read and seen about the case and how the exposure to such publicity had affected them, had no basis for such a conclusion.

a defendant's right to a fair trial in cases involving allegedly prejudicial pretrial publicity. Moreover, the district court appears to have ruled, not on the basis of any finding of prejudice, but because of the court's belief that the prosecutors were the source of the pretrial publicity.

a. Historically, three methods have been used to protect a defendant's right to a fair trial in cases involving potentially prejudicial pretrial publicity: *voir dire*, change of venue, and continuance. See, *e.g.*, *Groppi* v. *Wisconsin*, 400 U.S. 505, 510–511. The most commonly used method, and in fact the method used in all civil and criminal cases to guarantee an impartial jury to both sides, is a *voir dire* examination of potential jurors. This method is especially effective in cases involving allegedly prejudicial pretrial publicity because it provides a means by which the district judge can accurately determine which, if any, potential jurors were exposed to the publicity and whether exposure to that publicity would affect their ability to be impartial.[9] The fact that an article con-

[9] As an example, after exhaustive *voir dire* examinations, impartial juries were selected in two of the most widely publicized cases in recent years. *United States* v. *Liddy*, C.A.D.C., No. 73–1565, decided November 8, 1974; *United States* v. *Mitchell*, 372 F. Supp. 1239, appeal dismissed, 485 F. 2d 1290. In the *Liddy* case, the original Watergate break-in trial, Chief Judge Sirica commented at one point that he believed that everyone had at least heard of or read something about the case. However, he was able to impanel an impartial jury in spite of this fact. In *Mitchell*, a criminal prosecution involving two former cabinet officials, an impartial jury was selected despite widespread publicity concerning the case. The jury subsequently acquitted the defendants. See also *United States* v. *Caldwell*, C.A.D.C., No. 72–1513, decided December 31, 1974.

cerning this case appeared in several newspapers does not prove that any potential jurors read the article or were prejudiced by it. The same is true of radio and television broadcasts concerning the case. Thus, without a *voir dire* examination of potential jurors, the district court in this case had absolutely no basis for determining that any potential juror was even aware of the pretrial publicity, much less prejudiced by it.[10]

This Court has decided a number of cases involving the effect of publicity upon a jury,[11] but in no case has this Court, or any federal court of appeals that has considered this problem,[12] held pretrial publicity to be so prejudicial that it forecloses forever all possibility of a fair trial without even attempting by *voir dire* to determine whether an impartial jury could be convened. These cases recognize the simple fact that given the constitutionally protected role of the news media in this country, publicity concerning law enforcement activities is both necessary and inevitable. The Constitution does not require "that the jurors be totally ignorant of the facts and issues involved."

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[10] See, *e.g.*, ABA Standards for Criminal Justice, *Fair Trail and Free Press* (Approved Draft, 1968), § 3.4; *United States* v. *Liddy*, *supra*, slip op., at pp. 8–13.

[11] See, *e.g.*, *Irvin* v. *Dowd*, 366 U.S. 717; *Beck* v. *Washington*, 369 U.S. 541; *Sheppard* v. *Maxwell*, 384 U.S. 333; *Rideau* v. *Louisiana*, 373 U.S. 723.

[12] See, *e.g.*, *Wansley* v. *Slayton*, 487 F. 2d 90 (C.A. 4), certiorari denied, 416 U.S. 994; *Pamplin* v. *Mason*, 364 F. 2d 1 (C.A. 5); *Blumenfield* v. *United States*, 284 F. 2d 46 (C.A. 8), certiorari denied, 365 U.S. 812; *United States* v. *Kahaner*, 204 F. Supp. 921 (S.D.N.Y.), affirmed, 317 F. 2d 459 (C.A. 2), certiorari denied, 375 U.S. 836.

Irvin v. *Dowd*, *supra*, 366 U.S. at 722. The important question is not whether there was prejudicial publicity, but whether, despite that publicity, the district court is able to impanel an impartial jury or take other steps necessary to protect the defendant's right to a fair trial. Here the district court refused even to make the effort.[13]

Petitioners rely on *Estes* v. *Texas*, *supra*, *Rideau* v. *Louisiana*, *supra*, and *Sheppard* v. *Maxwell*, *supra*, but in each of those cases the Court held that the defendant was entitled to a continuance or a change of venue, or that the trial itself had been infected by publicity. This case, on the other hand, involves dismissal of an indictment without any continuance, change of venue, *voir dire* or trial and without any evidence in the record to establish that it would be impossible—or even difficult—to select an impartial jury. Moreover, the news reports in this case are not comparable to the prejudicial publicity in *Estes*, *Rideau* and *Sheppard*; the reports here did not comment on the defendants' guilt or innocence, were not published on the eve of the trial or while the trial was in progress, and were not continuous, repetitive or virulent.[14] In fact, they did little more than repeat previously printed news reports stating that illness

[13] While petitioners are correct in pointing out that this Court has on occasion reversed convictions because of the effect of prejudicial publicity upon a jury, in each case the state was given the option of retrying the defendant in an atmosphere free from the prejudicial conduct surrounding the original trial. See, *e.g.*, *Estes* v. *Texas*, *supra*; *Sheppard* v. *Maxwell*, *supra*; *Rideau* v. *Louisiana*, *supra*.

[14] The district court's finding that *voir dire* would be inadequate because the publicity was reoccurring (Pet. App. C, p. C–15) is not

and death had been associated or linked with Abbott's products. On this record, there is no reason to believe that any vast numbers of persons read these reports, or that those who did read them were immediately and for all time prejudiced against Abbott and its employees or even that the readers would remember the reports for any significant amount of time. In fact, the passage of time between the appearance of the initial news reports in March 1971, the filing of the indictment and the resulting publicity in May 1973, the district court's dismissal of the indictment on December 13, 1973, and today is doubtless sufficient to

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supported by the record. In fact, all but three of the newspaper articles reporting the indictment appeared between May 29 and June 4, 1973 (J.A. 63a–69a, 49a, 50a) and reports of the arraignment, as noted by the district court (Pet. App. C, p. C–15) appeared in only three newspapers in Eastern North Carolina. Nowhere does the record reveal that, other than the few days surrounding the indictment and the three reports of the arraignment, there were any other newspaper, radio or television accounts of the indictment in North Carolina. Nor did the defendants present any evidence that the two-day hearing on their motion to dismiss resulted in any publicity in North Carolina.

The district court cited the appearance of a Food and Drug Administration news release in the September 1973 issue of the 'FDA Consumer' (*ibid.*). However, this is a publication not sold at newsstands, bookstores, or through other normal promotional channels; it is distributed by the Food and Drug Administration to persons and organizations who have expressed a particular interest in the activities of the Food and Drug Administration (Affidavit of Wayne L. Pines, J.A. 765a–767a). Of the few radio and television accounts of the indictment, only one contained a reference to any of the individual defendants and all these reports were broadcast on May 29 and 30 (J.A. 34a–42a, 92a–93a, 121a).

guarantee that even if any potential jurors were exposed to the news reports concerning this case, they no longer remember them. *Beck* v. *Washington, supra.*

Finally, even if a comprehensive *voir dire* examination indicates that a large number of potential jurors were prejudiced by exposure to the pretrial publicity, the district court has at least three other means available to protect the defendants' right to a fair trial. First, it could transfer the case to another location within the Eastern District of North Carolina. See *United States* v. *Addonizio*, 451 F. 2d 49 (C.A. 3), certiorari denied, 405 U.S. 936; Rule 18, Fed. R. Crim. P. Given the fact that only ten out of the fifty newspapers in North Carolina carried the news reports in question, the district court should be able to designate a place of trial which was not affected by these reports.[15] In addition, the district court could grant a continuance or a motion for a change of venue to another state.[16] As the court of appeals stated (Pet. App. A, p. A-12), the availability of these two additional remedies to a defendant seeking dismissal of an indictment on the ground of prejudicial pretrial publicity places a heavy burden on him to prove actual prejudice resulting from the publicity and the ineffectiveness of these or any other remedies to pro-

[15] The Eastern District of North Carolina encompasses 44 counties and regular sessions of the Court are held in Raleigh, Wilson, Fayetteville, New Bern, Washington, Elizabeth City, Wilmington and Clinton.

[16] The record indicates that there are ten states in which no newspapers carried accounts relating to the subject matter of this case (J.A. 49a–50a, 62a–63a).

tect his constitutional rights.[17] Of course, if an impartial jury can be selected after full *voir dire*, the district court would not have to consider these alternative remedies. However, the failure of the district court to resort to any of these established procedures was, as the court of appeals held, erroneous.

b. The fact that the prosecutors supplied information to the news media, which in any event was substantially identical to reports previously published, did not warrant dismissal of the indictment. If the district court is able to select an impartial jury and take whatever other precautions that are necessary to protect the defendants' right to a fair trial—steps which it has refused even to attempt in this case—then the defendants' constitutional rights have not been violated and dismissal of the indictment would not be justified.

2. The indictment in this case is not defective because the possibility that people had died as the result of receiving Abbott's intravenous solutions was mentioned before the grand jury. First, the evidence was relevant to the grand jury's investigation of possible violations by Abbott and its employees of the

[17] It is significant that neither Abbott nor any of its co-defendants ever requested a change of venue or a continuance. They defend their failure to do so (Pet. 16) on the ground that "[t]he Sixth Amendment precludes the necessity for seeking a change of venue. *Barker* [v. *Wingo*, 407 U.S. 514.] and the Sixth Amendment preclude the necessity for seeking a continuance." On the contrary, "[a] defendant who has unused means to protect his rights should not lightly be granted the extreme remedy of dismissal of the charges against him on less than a conclusive showing that the unused means would be ineffective" (Pet. App. A. p. A-12). See also *United States* v. *Caldwell*, *supra*, slip op., at pp. 11-13.

Federal Food, Drug, and Cosmetic Act of 1938. One possible violation of the Act which was within the scope of the grand jury's investigation was whether the Abbott intravenous solutions were misbranded within the meaning of Section 502(j) of the Act, 21 U.S.C. 352(j). That section states that a drug is misbranded "[i]f it is dangerous to health." Obviously, evidence that death or illness had resulted from the use of the Abbott solutions was relevant to establish a danger to health.[18] Moreover, the "validity of an indictment is not affected by the character of the evidence considered" and "an indictment valid on its face is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence * * *." *United States* v. *Calandra*, 414 U.S. 338, 344–345.

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[18] The grand jury could properly consider the reports of deaths, the knowledge that Abbott officials had of the reports and the actions they took in the light of the reports, as a means of illuminating their roles in the company and in the distribution of the intravenous solutions. It does not follow, however, that any given official's responsibility is dependent on his knowledge of these deaths. Indeed, *United States* v. *Dotterweich*, 320 U.S. 277, 281, makes clear that the Federal Food, Drug, and Cosmetic Act "dispenses with the conventional requirement for criminal conduct—awareness of some wrongdoing." For this reason, we were constrained, in our brief in *United States* v. *Park*, No. 74–215, to disagree with the statement of the court of appeals in this case (Pet. App. B, p. B–4) that "'[r]esponsibility' * * * depends upon knowledge * * *" (see Brief for the United States in *United States* v. *Park*, No. 74–215, pp. 15–16, 25).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

THOMAS E. KAUPER,
Assistant Attorney General.

HOWARD E. SHAPIRO,
JOHN J. POWERS, III,
Attorneys.

PETER BARTON HUTT,
Assistant General Counsel,
Food and Drug Division,
Department of Health, Education,
and Welfare.

FEBRUARY 1975.

CERTIORARI DENIED